IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Dr.Navneet Agarwal vs. State of Rajasthan & Anr.
(S.B.C.Writ Petition No.6934/03)

Date of Order :- 6th October, 2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.Harish Purohit, Advocate for the petitioner.
Mr.Rameshwar Dave,Dy.Government Advocate for the respondent.

The petitioner Dr. Navneet Agarwal has in this writ petition prayed for direction to the respondents to send requisition to Rajasthan Public Service Commission (for short "R.P.S.C.") for recommending his name from the reserve list prepared on the basis of recommendations of the Selection Committee for appointing him on the post of Assistant Professor (E.N.T.) and for a further direction to the State Government to appoint on the said post.

I have heard Mr.Harish Purohit, learned counsel for the petitioner and Mr.Rameshwar Dave, learned Dy.Government Advocate for the State and perused the record.

Learned counsel for the petitioner has argued that respondent R.P.S.C. invited applications vide advertisement dated 5.1.2002 for appointment on the post of Assistant Professor(E.N.T.) in various subjects including Auto Rhyno Laryngology(EMT)under the Rajasthan Medical Service (Collegiate Branch) Rules, 1962(for short "the Rules of 1962"). Out of two vacancies in the subject of Auto Rhyno Larynogology(ENT), one of them was reserved for members of Other Backward Class. The petitioner also applied in response to the said advertisement and faced the interview on 10th June, 2003. He received a communication from Secretary, R.P.S.C. dated 17.7.2003 intimating that his name has been placed at Serial no. 1 in the seniority list. It has been argued that respondents have not made correct determination of the vacancies as per Rule 8-A of the Rajasthan Medical Service (Collegiate Branch)Rules, 1962(for short "Rules of 1962"). Mr.

Harish Purohit argued that according to Rule 20 of the Rules of 1962 apart from sending the select list to the Government, the respondents were also required to prepare reserve list to the extent of 50% of the advertised posts. Since already five vacancies were available with the Department in the subject Auto Rhyno Laryngology(EMT)on the date of selection, the respondents ought to have summoned the reserved list and act upon the same.

On the other hand, Mr.Rameshwar Dave, learned Dy.Government Advocate argued that only two posts were advertised for appointment on the post of Auto Rhyno Laryngology(EMT), out of which one was reserved for O.B.C. and another was to be filled in by general candidate. It has not been denied that the petitioner appeared in the interview before the Selection Committee and placed at serial no. 1 in the reserve list. It was therefore argued that his appointment could be considered only if any of the persons selected in the main list failed to join or was found ineligible after having joined. According to Mr.Rameshwar Dave, reserved list was not

required to be acted upon because the State Government did not send any requisition. Moreover no such requisition could be sent because the number of posts advertised were already filled up.

I have considered the arguments advanced by both the learned counsels and perused the record.

It is trite law that appointments cannot be made in excess of the vacancies advertised, for it affects the rights of those who are eligible or later became eligible but did not apply and would have no opportunity to complete against such posts. Moreover, merely because the name of the petitioner was included in the reserve list, there is no ground now to interfere in the selection process which stood finalised way back in the year 2002. No right of the petitioner was violated if the respondents did not decide to requisition the reserve list and act upon the same.

I do not find any merit in this writ petition. The

same is therefore dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.